

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DENNIS MARTINEZ, DOUGLAS
NGUYEN, JAMES HALLENBECK, JILL
WILDBERGER, and DISABILITY RIGHTS
NEW YORK,

CASE NO: 1:20-CV-03338

AFFIRMATION

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official
capacity as Governor of New York State

Defendant.

Marc Fliedner, Esq., an attorney admitted to practice in New York State and before this Court, hereby affirms under penalty of perjury:

1. I am co-counsel for Plaintiffs and as such have been working in pursuit of an in-frame American Sign Language (“ASL”) interpreter during Governor Cuomo’s televised briefings since March 2020.
2. On or about March 17, 2020, DRNY received its first complaint regarding Governor Cuomo’s failure to provide an ASL interpreter at his briefings.
3. According to Governor Cuomo’s website’s news section (<https://www.governor.ny.gov/news>) he began holding daily televised briefings on or about March 1, 2020, regarding the COVID-19 outbreak in New York.
4. These briefings typically last between thirty and sixty minutes, and include government officials from agencies such as the New York State Department of Health, New York State Division of Budget, and the Army National Guard.


5. According to Governor Cuomo's website, the press briefings are held throughout New York State, including at the Javitz Center in New York City, and in Albany, New York.
6. The briefings cover a wide range of topics including the number of confirmed COVID-19 cases, the availability of testing, information about social distancing and other personal safety measures to be utilized by New Yorkers to stop the spread of the virus, and the coordination of local, state, and federal government emergency response systems.
7. Local and major news networks, including ABC, CBS, NBC, and Fox, have broadcasted Governor Cuomo's briefings live to a national audience.
8. Closed-captioning is not provided on all television channels broadcasting the briefings and when closed captioning is provided questions from the audience are not captioned.
9. The closed-captioning frequently contains errors and omissions that make it difficult or impossible for individuals who are deaf to understand the information being provided in the briefings.
10. DRNY has received a large number of complaints from deaf New Yorkers who are unable to understand Governor Cuomo's daily briefings due to the lack of in frame televised ASL interpretation.
11. DRNY wrote a letter to Governor Cuomo on March 24, 2020 asserting the right of New Yorkers with disabilities to equal access to all government programs and services and requesting in frame ASL interpretation of all briefings. (Exhibit A).
12. On March 27, 2020, Governor Cuomo began offering ASL interpretation through an online broadcast on the Governor's website, and provided a response to DRNY's March 24, 2020 correspondence. (Exhibit B)

13. Governor Cuomo's televised broadcasts do not direct deaf individuals to the ASL broadcast available on his website, and the ASL streams are not archived for the public.
14. On March 30, 2020, DRNY again wrote to Governor Cuomo to advocate for deaf New Yorkers without access to the internet who are therefore unable to benefit from the daily briefings. (Exhibit C).
15. DRNY requested that Governor Cuomo provide simultaneous in frame ASL interpretation for all briefings broadcast on television.
16. On April 3, 2020, DRNY filed a complaint with the United States Department of Justice ("DOJ") regarding Governor Cuomo's failure to provide live televised ASL interpretation. (Exhibit D).
17. On April 13, 2020, Governor Cuomo hosted a multi-state press briefing with the Governors of New Jersey, Delaware, Connecticut, Rhode Island, Pennsylvania, and Massachusetts announcing the Multi-State Council to Get People Back to Work and Restore the Economy.
18. During this conference, the other Governors participated via telephone audio, while Governor Cuomo was shown with both picture and audio.
19. An ASL interpreter was not available in frame during the televised broadcast of this briefing.
20. DRNY continues to receive complaints from Deaf New Yorkers who are unable to access Governor Cuomo's daily briefings.
21. Plaintiffs attach the following documents in support of their Memorandum of Law in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction:

- Exhibit A – March 24, 2020 Letter from DRNY to Governor Cuomo
- Exhibit B – March 27, 2020 Email from Governor Cuomo’s Office to DRNY
- Exhibit C – March 30, 2020 Correspondence from DRNY to Governor Cuomo
- Exhibit D – April 3, 2020, complaint filed by DRNY with the United States Department of Justice against Governor Cuomo
- Declaration of Dennis Martinez
- Declaration of Douglas Nguyen
- Declaration of James Hallenbeck
- Declaration of Jill Wildberger

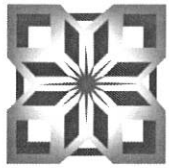
22. I declare that, to the best of my knowledge and belief, the information herein is true, correct, and complete

Dated: April 28, 2020



Marc Fliedner, Esq.

Exhibit A



DISABILITY RIGHTS NEW YORK



www.drny.org



mail@drny.org



518-432-7861

March 24, 2020

The Honorable Andrew M. Cuomo
Governor of New York State
The Capitol
Albany, NY 12224

Dear Governor Cuomo:

I would like to express my sincere appreciation for your exemplary leadership during this crisis. New Yorkers are fortunate to have a Governor who not only takes the difficult actions necessary to protect us, but takes the time to consistently communicate to a worried citizenry what is going on, what he is doing, and what New Yorkers must do.

Unfortunately, some New Yorkers are unable to benefit from your daily press briefings because there are no sign language interpreters at your press briefings. Without interpreters, deaf New Yorkers are unable to benefit from the valuable knowledge, wisdom, and inspiration that you convey each day. For many deaf people English is their second language, so even real time captioning is not sufficient for them.

DRNY, as New York's Protection & Advocacy system, has been working cooperatively with our governmental partners during this difficult time. As you know, we have a mandate to ensure that New Yorkers with disabilities have equal access to all government programs and services. Right now, deaf New Yorkers are being denied such access because sign language interpreters are not present at your briefings.

We have received several complaints from deaf individuals expressing their concern and frustration with not understanding your daily briefings. We know this is not what you intend, but it can be remedied easily. I ask you to do so immediately.

Thank you for your valuable leadership at a time when it is so desperately needed.

Respectfully,

Timothy A. Clune

Timothy A. Clune, Esq.
Executive Director

ALBANY

725 Broadway, Suite 450
Albany, NY 12207-5001

BROOKLYN

25 Chapel St, Suite 1005
Brooklyn, NY 11201

ROCHESTER

44 Exchange Blvd, Suite 110
Rochester, NY 14614



TTY: 518-512-3448

Fax: 518-427-6561

Toll Free: 1-800-993-8982

Exhibit B

From: Accessibility <Accessibility@exec.ny.gov>

Sent: Friday, March 27, 2020 11:20 AM

Subject: ASL Accessibility

Thank you for your email and outreach concerning ASL interpretation during Governor Andrew M. Cuomo's COVID-19 press conferences.

Governor Cuomo is committed to ensure that all New Yorkers are promptly and accurately informed about developments related to the COVID-19 pandemic. To that end, he has offered regular press conferences to update the public about the spread of the virus throughout the State as well as to inform the public about resources that the State is making available to assist those who have been impacted. **Our office has already been providing closed captioning for the Governor's press conferences; starting today real-time ASL interpretation for the Governor's press conferences will also be available at <https://www.governor.ny.gov/>.** (NOTE: Information about upcoming press conferences is added to the website generally 30 minutes before the start of the press conference; today's press conference is scheduled to begin at 11:30 AM ET). Going forward, we will continue to assess efforts around accessibility for the Governor's press conferences.

We thank you for reaching out to our office about this important issue. Please do not hesitate to reach out if you have any questions.

We hope you all are staying safe and healthy.

Exhibit C

On Mar 30, 2020, at 4:35 PM, Timothy A. Clune, Esq. <Tim.Clune@drny.org> wrote:

Dear Ms. Gibson,

I hope that you are well. I am writing to follow up on our emails from last week.

As you can imagine, our constituents still have serious concerns about the potential rationing of ventilators and the lack of Personal Protective Equipment in homes serving people with disabilities. Over the weekend, the Office for Civil Rights has issued guidance to states to prevent the application of discriminatory practices during the COVID-19 crisis.

I know that you understand the urgency of these issues as demonstrated by your quick response. I am writing to seek any further information on progress on these issues that you may be able to share with me.

I would also like to seek your assistance with another concern that we raised with the Governor. Since I did not originally send this letter to you, I have attached it here. We requested that an American Sign Language (ASL) interpreter be provided at the Governor's live daily press briefing. Please know that DRNY has received positive feedback to the Governor's immediate addition of the ASL option on the state's website. Thank you.

The Governor is providing great leadership and delivering a much needed message to our community. However, a significant portion of New Yorkers are still not able to benefit from his message because his live briefings still lack a live interpreter.

I watched the Governor on Spectrum News today. There was no ASL interpreter on screen during the live briefing. I have also watched several briefings from the governors of Washington and Michigan, who effectively use an ASL interpreter on the live screen.

I am asking for your assistance to resolve this matter. If necessary, I am available at your convenience to further discuss or answer any questions you may have.

Thank you for your help.

Best regards,
Tim



Timothy A. Clune, Esq.

Executive Director

(He/Him/His/Mr.)

Phone: [518-432-7861](tel:518-432-7861)

Email: Tim.Clune@drny.org

725 Broadway, Suite 450
Albany, NY 12207-5001

www.drny.org

TTY: 518-512-3448 | Toll Free: 800-993-8982 | Fax: 518-427-6561

This email may contain privileged or confidential information. If you receive it in error, do not read it. Please delete it and advise me of the error. Thank you.

Exhibit D

UNITED STATES DEPARTMENT OF
JUSTICE

DISABILITY RIGHTS NEW YORK,

Complainant,

CASE NO:

-against-

COMPLAINT

ANDREW CUOMO, in his official capacity
as Governor of New York State

Respondent.

PRELIMINARY STATEMENT

1. This complaint challenges Governor Andrew Cuomo's practice of holding daily briefings regarding the COVID-19 coronavirus without providing simultaneous American Sign Language ("ASL") interpretation for television broadcast.
2. New York currently has four times more confirmed coronavirus cases than any other state and more than a third of all domestic coronavirus-related deaths have been New Yorkers.
3. Governor Cuomo's daily briefings provide critical information about steps taken by the state government to address the health crisis and recommendations on how New Yorkers can stay safe and help limit the spread of the virus.
4. The Governor has asked most New Yorkers to stay home while ordering schools and non-essential businesses to close and hospitals to increase capacity.

5. Governor Cuomo's briefings have gained national attention as he emerges as a leader in fighting the pandemic and providing detailed, thoughtful commentary on the government's response.
6. There are many deaf and hard of hearing New Yorkers who cannot understand these critically important briefings without live ASL interpretation or complete closed captioning.
7. New York City Mayor Bill de Blasio provides televised ASL interpretation at all of his coronavirus briefings.
8. Media reports indicate that every other state in the nation has provided some form of televised ASL interpretation in its briefings.

JURISDICTION

9. The United States Department of Justice has subject matter jurisdiction over claims of discrimination against state agencies as well as programs and activities receiving federal assistance under 28 C.F.R. § 35.170(c) and 28 C.F.R. § 42.503.

PARTIES

10. Disability Advocates, Inc. is an independent non-profit corporation organized under the laws of the State of New York. Disability Advocates, Inc. is authorized to conduct business under the name Disability Rights New York ("DRNY").
11. DRNY is a Protection and Advocacy system ("P&A"), as that term is defined under the Developmental Disabilities Assistance and Bill of Rights Act ("DD Act"), 42 U.S.C. § 15041 *et seq.*, the Protection and Advocacy for Individuals with Mental Illness Act of 1986 ("PAIMI Act"), 42 U.S.C. § 10801 *et seq.*, and the Protection and Advocacy of Individual Rights Act ("PAIR Act"), 29 U.S.C. § 794e *et seq.* with offices in the State of

New York located at: 25 Chapel Street, Suite 1005, Brooklyn, NY 11201; 725 Broadway, Suite 450, Albany, NY 12208; and 44 Exchange Blvd., Suite 110, Rochester, NY 14614.

12. As New York State's Protection & Advocacy system, DRNY is specifically authorized to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of individuals with disabilities. 42 U.S.C. § 15043(a)(2)(A) (i); N.Y. Exec. Law § 558(b).
13. Pursuant to the authority vested in it by Congress to file claims of abuse, neglect, and rights violations on behalf of individuals with disabilities, DRNY brings claims on behalf of individuals with disabilities, including the individuals named below, who are seeking or may seek publicly available government information pertaining to the COVID-19 pandemic.
14. Governor Cuomo is the governor of New York State.
15. Governor Cuomo, in his official capacity as Governor of the State of New York, is covered as a public entity under Title II of the ADA.
16. Governor Cuomo, in his official capacity, is a recipient of federal financial assistance and therefore covered under Section 504.

STATEMENT OF FACTS

17. On or about March 1, 2020, Governor Cuomo began holding daily, televised briefings regarding the coronavirus outbreak in New York.
18. Governor Cuomo's briefings typically last between thirty and sixty minutes and have included key government officials from the New York State Department of Health, New York State Division of Budget, and the Army National Guard.

19. Local and major news networks, including ABC, CBS, NBC, and Fox, have broadcasted Governor Cuomo's briefings live to a national audience.
20. Governor Cuomo's briefings cover a wide range of topics including the number of confirmed coronavirus cases, the availability of testing, and the coordination of local, state, and federal government emergency response systems.
21. Closed-captioning is not provided on all channels broadcasting the briefings and even when closed captioning is provided questions from the audience are not captioned.
22. The closed-captioning frequently contains errors and omissions that make it difficult or impossible for individuals who are deaf and hard of hearing to understand the briefings.
23. On March 20, 2020, media reports indicated that every state except New York, Vermont, and Montana provided televised ASL interpretation for at least one of its coronavirus-related government briefings.
24. Upon information and belief, New York is now the only state that has not provided televised ASL interpretation.
25. DRNY has received dozens of complaints from deaf and hard of hearing New Yorkers who are unable to follow Governor Cuomo's daily briefings due to the lack of televised ASL interpretation.
26. DRNY wrote a letter to Governor Cuomo on March 24, 2020 identifying New Yorkers with disabilities' right to equal access to all government programs and services and requesting ASL interpretation of all briefings (see Exhibit A).
27. On March 27, 2020, Governor Cuomo began offering ASL interpretation through an online broadcast on the Governor's website. See <https://www.governor.ny.gov/>.

28. Governor Cuomo's televised broadcasts do not direct deaf and hard of hearing individuals to the ASL broadcast available on his website.
29. On March 30, 2020 DRNY wrote to Kumiki Gibson, Governor Cuomo's Counsel, because deaf and hard of hearing New Yorkers without access to the internet are unable to his benefit from the daily briefings.
30. DRNY requested that Governor Cuomo provide simultaneous ASL interpretation for all briefings broadcast on television.
31. DRNY continues to receive complaints from deaf and hard of hearing New Yorkers who are unable to access Governor Cuomo's daily briefings.
32. DOUGLAS NGUYEN is a resident of Albany, New York.
33. Mr. Nguyen is deaf and ASL is his first language.
34. English is Mr. Nguyen's second language.
35. Because Mr. Nguyen is not fluent in English, he requires ASL interpretation to understand spoken communications.
36. Mr. Nguyen has watched a number of Governor Cuomo's briefings during March and April 2020.
37. Mr. Nguyen has been unable to understand portions of Mr. Cuomo's briefings due to his inability to follow the captioning as well as the lack of an ASL interpreter.
38. Mr. Nguyen was not aware of Mr. Cuomo's website offering ASL interpretation and, in any event, does not have regular Internet access.
39. DEAN DERUSSO is the Director of the New York Chapter of We the Deaf People, an organization dedicated to safeguarding ASL, promoting literacy, empowerment, better

employment opportunities for Deaf people, and improving public attitudes towards the Deaf community.

40. Mr. DeRusso wrote to Governor Cuomo on March 19, 2020 requesting ASL interpretation on televised briefings (see Exhibit B).

41. Mr. DeRusso states that he and many deaf people whose primary language is ASL have difficulty following closed captioning.

42. Mr. DeRusso reports that the captioning provided during Governor Cuomo's briefings contains numerous spelling errors and incomplete transcription of words, thereby making portions of the briefing incomprehensible.

FIRST CLAIM FOR RELIEF
TITLE II OF THE AMERICANS WITH DISABILITIES ACT
42 U.S.C. § 12101, et seq.

43. DRNY incorporates by reference each and every allegation contained in the foregoing paragraphs as if specifically alleged herein.

44. Title II of the ADA states, in pertinent part:

[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or subjected to discrimination by any such entity. 42 U.S.C. § 12132.

45. A "public entity" includes state and local government, their agencies, and their instrumentalities. 42 U.S.C. § 12131(1).

46. Governor Cuomo, acting in his official capacity, at all times relevant to this action, and currently is a "public entity" within the meaning of Title II of the ADA.

47. Governor Cuomo provided and provides "services, programs [and] activities" through his office. 28 C.F.R. § 35.130.

48. The term “disability” includes physical and mental impairments that substantially limit one or more major life activities. 42 U.S.C. § 12102(2).
49. A “qualified individual with a disability” is a person “who, with or without reasonable modification to rules, policies or practices ... meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131(2).
50. Public entities are required to take appropriate steps to ensure that communications with members of the public with disabilities are as effective as communications with others. 28 C.F.R. § 35.160(a)(1).
51. Public entities are required to provide “appropriate auxiliary aids and services” when necessary to provide individuals with disabilities an equal opportunity to participate in a service, program, or activity. 28 C.F.R. § 35.160(b)(1).
52. “Auxiliary aids and services” includes qualified interpreters. 28 C.F.R. § 35.104.
53. The necessary type of auxiliary aid or service to ensure effective communication depends on the method of communication used by the individual with a disability; the nature, length, and complexity of the communication involved; and the context of the communication. 28 C.F.R. § 35.160(b)(2).
54. Public entities are required to give primary consideration to the requests of individuals with disabilities in determining what types of auxiliary aids and services are needed. *Id.*
55. Deaf and hard of hearing New Yorkers who seek access to Governor Cuomo’s daily briefings are qualified individuals under the ADA.

56. Deaf and hard of hearing New Yorkers who attempt to access Governor Cuomo's televised briefings are frequently unable to understand portions of the briefing by following closed captioning, when available.
57. Deaf and hard of hearing New Yorkers who do not have access to the Internet are unable to access Governor Cuomo's daily press briefings with an ASL interpreter.
58. As a result of Governor Cuomo's acts and omissions, deaf and hard of hearing New Yorkers are unable to obtain critical health and safety information from his daily briefings.

SECOND CLAIM FOR RELIEF
SECTION 504 OF THE REHABILITATION ACT OF 1973
29 U.S.C. § 794

1. DRNY incorporates by reference each and every allegation contained in the foregoing paragraphs as if specifically alleged herein.
2. Section 504 provides, in pertinent part that "no otherwise qualified individual with a disability in the United States... shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a).
3. Governor Cuomo was, at all times relevant to this complaint, and is currently a recipient of federal financial assistance within the meaning of Section 504.
4. Governor Cuomo provided and provides a "program or activity" where "program or activity" is described as "all operations of a department, agency, special purpose district or other instrumentality of a State or of a local government." 29. U.S. C. § 794(b)(1)(A).

5. A disability is defined as “a physical or mental impairment that substantially limits one or more major life activities of such individual.” 29 U.S.C. § 705(9)(B) citing 42 U.S.C. § 12102(1)(A).
6. Deaf and hard of hearing New Yorkers are qualified individuals under Section 504.
7. Governor Cuomo’s practice of denying access to ASL interpretation violates Section 504 by authorizing, or failing to forbid, actions that:
 - a. Exclude from participation in, deny the benefits of, or otherwise subject individuals to discrimination on the basis of disability. 29 U.S.C. § 794(a); 28 C.F.R. § 41.51(a).
 - b. Deny qualified persons with a disability the opportunity to participate in or benefit from the aid, benefit, or service. 45 C.F.R. § 84.4(b)(1)(i); 28 C.F.R. § 41.51(b)(1)(i).
 - c. Afford qualified persons with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded to others. 45 C.F.R. §§ 84.4(b)(1)(ii), 84.52(a)(2); 28 C.F.R. § 41.51(b)(1)(ii).
 - d. Limit individuals with a disability in the enjoyment of rights, privileges, advantages and opportunities enjoyed by others receiving an aid, benefit, or service. 45 C.F.R. §§ 84.4(b)(1)(vii), 84.52(a)(4); 28 C.F.R. § 41.51(b)(1)(vii).
8. As a result of Governor Cuomo’s acts and omissions, deaf and hard of hearing New Yorkers who rely on television to access his daily press briefings are denied the full benefits of these briefings.

PRAYER FOR RELIEF

WHEREFORE, DRNY requests the Department to provide relief as set forth below:

1. Find that Governor Cuomo has violated the rights of deaf and hard of hearing New Yorkers.
2. Direct that Governor Cuomo provide simultaneous ASL interpretation for briefings which are broadcast on television.
3. Award reasonable attorneys' fees and costs; and
4. Provide such other further relief as deemed just and proper.

DATE: April 3, 2020
Albany, NY

DISABILITY RIGHTS NEW YORK
Complainant

/s/ _____

Matthew Steele
Matthew.Steele@drny.org

Marc Fliedner
Marc.Fliedner@drny.org

725 Broadway, Suite 450
Albany, NY 12207-5001
(518) 432-7861 (voice)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DENNIS MARTINEZ, DOUGLAS
NGUYEN, JAMES HALLENBECK, JILL
WILDBERGER, and DISABILITY RIGHTS
NEW YORK,

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official
capacity as Governor of New York State

Defendant.

CASE NO:

**DECLARATION OF
DENNIS MARTINEZ**

I, Dennis Martinez, Plaintiff, do hereby declare:

1. I reside in Brooklyn, New York.
2. I was born in the United States but was raised primarily in Colombia. Spanish and Colombian sign language were my first languages.
3. Upon returning to the United States, I learned ASL and it is my primary language.
4. I work as a Deaf Service Advocate at the Harlem Independent Living Center.
5. In my job, a number of my clients are deaf and use ASL to communicate.
6. I have attempted to watch Governor Cuomo's briefings several times since March 1, 2020.
7. I am not able to understand Governor Cuomo's briefings due to the lack of an ASL interpreter and rely on family and coworkers to convey critical information regarding the coronavirus pandemic. I also search for videos on social media platforms with ASL interpretation of the information covered by Governor Cuomo, thereby delaying timely access to information.

8. I am also not able to answer many questions my deaf clients have asked me about Governor Cuomo's briefings. I need to be able to provide my clients with timely information regarding important developments related to the Governor's briefings as part of my job.
9. I would be able to understand Governor Cuomo's briefings if televised ASL interpretation were provided as a reasonable accommodation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 28, 2020

Dennis Martinez
Dennis Martinez

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DENNIS MARTINEZ, DOUGLAS
NGUYEN, JAMES HALLENBECK, JILL
WILDBERGER, and DISABILITY RIGHTS
NEW YORK,

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official
capacity as Governor of New York State

Defendant.

CASE NO:

**DECLARATION OF
DOUGLAS NGUYEN**

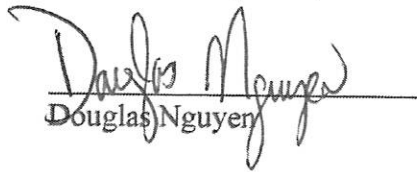
I, Douglas Nguyen, Plaintiff, do hereby declare:

1. I reside in Albany, New York.
2. I am deaf.
3. I was born in Vietnam and learned American Sign Language (“ASL”) as a teenager.
4. I am not fluent in English and therefore do not understand closed captioning.
5. I do not use a computer and therefore cannot access the internet.
6. I work full-time at Home Depot and regularly interact with coworkers and customers at my job.
7. I have watched a number of Governor Cuomo’s daily coronavirus briefings during March and April of 2020 but cannot understand the content of the briefings due to the lack of an ASL interpreter.
8. I watch Governor Cuomo’s briefings because I want to get information on how to stay safe at work and in the community.

9. I would be able to understand Governor Cuomo's briefings if televised ASL interpretation were provided as a reasonable accommodation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 28, 2020


Douglas Nguyen

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DENNIS MARTINEZ, DOUGLAS
NGUYEN, JAMES HALLENBECK, JILL
WILDBERGER, and DISABILITY RIGHTS
NEW YORK,

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official
capacity as Governor of New York State

Defendant.

CASE NO:

**DECLARATION OF
JAMES HALLENBECK**

I, James Hallenbeck, Plaintiff, do hereby declare:

1. I reside in Endicott, New York.
2. I am deaf and my primary language is ASL.
3. I am able to understand some English but am not fluent.
4. I started watching Governor Cuomo's daily briefings on or about March 1, 2020 and have watched them since on most days.
5. I try to understand the briefings by reading the closed captioning on television, but due to my limited English and frequent errors and omissions in the captioning, I can only understand about half of the information conveyed.
6. I do not own a computer and therefore cannot access the Governor's briefings online.
7. I am worried that I have missed important health and safety information because I cannot understand the Governor's briefings.
8. For example, I learned of the Governor's stay-at-home order only when my brother called to tell me about this important development.

9. I would be able to understand Governor Cuomo's briefings if televised ASL interpretation were provided as a reasonable accommodation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 28, 2020

/s/
James Hallenbeck

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DENNIS MARTINEZ, DOUGLAS
NGUYEN, JAMES HALLENBECK, JILL
WILDBERGER, and DISABILITY RIGHTS
NEW YORK,

CASE NO:

ATTORNEY AFFIRMATION

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official
capacity as Governor of New York State

Defendant.

Affirmation of Matthew Steele

I, Matthew Steele, depose and state that:

1. I am an attorney licensed to practice law in the State of New York.
2. I assisted in the preparation of the declaration of Plaintiff James Hallenbeck.
3. I read the contents of Mr. Hallenbeck's declaration to him on April 28, 2020 and confirmed that the contents thereof are true and accurate.
4. Due to operational challenges posed by the coronavirus pandemic, I was unable to obtain the original signature of Mr. Hallenbeck prior to the filing of this lawsuit.
5. Mr. Hallenbeck has authorized the submission of his declaration with an electronic signature.

Respectfully submitted,

DISABILITY RIGHTS NEW YORK

By: Matthew Steele

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DENNIS MARTINEZ, DOUGLAS
NGUYEN, JAMES HALLENBECK, JILL
WILDBERGER, and DISABILITY RIGHTS
NEW YORK,

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official
capacity as Governor of New York State

Defendant.

CASE NO:

**DECLARATION OF
JILL WILDBERGER**

I, Jill Wildberger, Plaintiff, do hereby declare:

1. I reside in in Round Lake, New York.
2. I am deaf and therefore ASL is my preferred language.
3. I have a learning disability that makes it more difficult for me to read and write English.
4. I have attempted to watch Governor Cuomo's briefings at least five times since March 1, 2020.
5. Each time I tried watching the Governor's press briefing, I was unable to understand a significant portion of the information because the closed captioning did not appear to match what the Governor was saying and at other times there was no captioning at all.
6. I have access to the internet but have not been able to successfully stream the live ASL interpreter offered on the Governor's website. I have found the ASL interpreter on the Governor's website to be frequently unavailable.

7. Due to my limited access to the Governor's briefings, I was not made aware of the Governor's executive order requiring New Yorkers to wear a facemask in a timely fashion.
8. I would be able to understand Governor Cuomo's briefings if televised ASL interpretation were provided as a reasonable accommodation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 28, 2020


Jill Wildberger